

IN THE CIRCUIT COURT OF THE
TWELFTH JUDICIAL CIRCUIT OF THE
STATE OF FLORIDA IN AND FOR MANATEE COUNTY

CIRCUIT CIVIL CASE NO. 2017 CA 003581

- - - - -X
CITY OF BRADENTON BEACH, a municipal :
Corporation of the State of Florida, and :
JACK CLARKE, :
:
Plaintiffs, :
:
vs. :
:
JOHN METZ, PATRICIA SHAY, :
REED MAPES, WILLIAM VINCENT, :
TJET MARTIN, and ROSE VINCENT, :
:
Defendants. :
- - - - -X

POST-TRIAL RULING

BEFORE: THE HONORABLE EDWARD NICHOLAS
CIRCUIT JUDGE

REPORTED BY: JOANN L. ZECK
Court Reporter
Notary Public
State of Florida at Large

DATE: July 19, 2019
10:10 A.M. - 11:01 A.M.

PLACE: MANATEE COUNTY JUDICIAL CENTER
Courtroom 6E
1051 Manatee Avenue West
Bradenton, Florida 34205

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ALSO PRESENT: JACK CLARKE
JOHN METZ
PATRICIA SHAY
REED MAPES
WILLIAM VINCENT
TJET MARTIN
ROSE VINCENT
JOHN CHAPPIE
MICHAEL BARFIELD
CHRISANN SILVER ESFORMES
JOE HENDRICKS

P R O C E E D I N G S

THE BAILIFF: All rise. Circuit Court in and for Manatee County is now in session, the Honorable Edward Nicholas presiding.

You can be seated.

THE COURT: All right. Good morning. We're going to go on the record in Case Number two thousand -- I should know it by now -- 17-CA-3581. We are here for the post-trial ruling.

So let me begin by saying that I want to thank the lawyers for their thoughtful and efficient and effective presentation here. There was obviously strong advocacy on both sides in this case. While there were times that the Court potentially indicated a small modicum of frustration at the level of dispute and disagreement over virtually everything, I do appreciate strong advocacy; I do appreciate the level of hard work that went into this case, that is clear, and both sides should feel as if they left everything on the table here, because they did.

I also want to thank our pro se Defendants for their thoughtful and efficient and patient participation in this challenging and unfortunate circumstance. And I do want to begin by saying that I recognize that this is an unfortunate and difficult

1 situation for all. I recognize and do not minimize the
2 fact that we have retirees here who find themselves in
3 a difficult and challenging and stressful circumstance
4 at a time of their lives when they should be hanging
5 out at the Moose, at a time of their lives when they
6 took it upon themselves to become passionate about
7 their community and volunteer for their community to
8 make it the best place that it could be. And the last
9 two years have been difficult, I appreciate that, and
10 I'm hoping that to some extent the conclusion of this
11 trial may help close the wound that has been so open
12 and so raw out in Bradenton Beach for so long.

13 I also need to acknowledge the fact that this
14 is clearly an unfortunate circumstance by the City of
15 Bradenton Beach. No doubt it was an excruciating
16 decision to feel compelled to sue its own Planning &
17 Zoning Board, its own Scenic WAVES committee. That's
18 an unusual circumstance, that's a difficult
19 circumstance. I feel certain that the City did not
20 take that decision lightly, and I appreciate that this
21 is a difficult and challenging and unfortunate
22 circumstance for all.

23 All right. As to the order itself, I'm going
24 to ask the attorneys to help me in preparing the
25 Final Judgment here, and it can take a couple of

1 different forms.

2 One form that I have found to be appropriate
3 and potentially a little less costly is a final
4 judgment of a trial that I heard over several days in
5 May, and I'll give both sides the front page of that
6 Final Judgment. And after the introductory remarks, it
7 simply says "Ordered and adjudged as follows: One, the
8 bench rulings pronounced in open court -- orally in
9 open court on May 24th, 2019, and read into the record
10 by the Honorable Edward Nicholas, Circuit Court Judge,
11 are hereby incorporated and adopted in their entirety
12 in this Final Judgment as though fully set forth
13 herein. A true and correct copy of the transcript of
14 said oral ruling -- bench ruling is attached hereto as
15 Exhibit A."

16 So I'm going to give you a copy of that. If
17 that's what you prefer, that's fine. If you prefer to
18 outline all the findings that I place on the record
19 here, that's fine too. My findings will be fairly
20 specifically set out here so that I think a Final
21 Judgment will not be too difficult to pull together
22 from this oral ruling as tracked by the transcript that
23 is produced. So I'll leave that to you. If there's
24 not an agreement -- obviously, it's my final judgment.
25 So if there's not an agreement, I will be the one to

1 make the decision here with regard to how it should
2 look.

3 So I'm going to issue my ruling here. It's a
4 little rough, but as I said yesterday, I felt like it
5 was important to attempt to put this to bed to the best
6 that I can put it to bed, at least at this stage, begin
7 the process of closure. And so I've done so, but --
8 and I'm not suggesting in any way that this was a
9 hurried decision or that it was in any way rushed, but
10 if my final judgment is a little disjointed, it's
11 because I was working through a lot of these issues
12 obviously relatively recently.

13 So, as to the final judgment. We begin with
14 Article I, Section 24 of the Florida Constitution that
15 reads "All meetings of any collegial public body of the
16 executive branch of state government or of any
17 collegial public body of any county, municipality,
18 school district, or special district, at which official
19 acts are to be taken or at which public business of
20 such body is to be transacted or discussed, shall be
21 open and noticed to the public, except with respect to
22 meetings exempted pursuant to this section or
23 specifically closed by this Constitution."

24 I'm going to discuss the Sunshine Law in more
25 detail, but that's where we begin.

1 All the Defendants were members of a duly
2 appointed governmental advisory board. John Metz, Reed
3 Mapes, William Vincent, and Patricia Shay, all duly
4 appointed members of the City of Bradenton Beach
5 Planning & Zoning committee; Tjet Martin and Rose
6 Vincent duly appointed members of the Scenic WAVES
7 committee. All the Defendants acknowledged in some
8 form undertaking the Sunshine Law training and all
9 indicated at least to some extent understanding of its
10 requirements.

11 The Court heard from Bruce Garrett. Bruce
12 Garrett is a six-year City Planner with the City of
13 Bradenton Beach. He indicated and the Court accepted
14 as true that only two designated areas in the City of
15 Bradenton Beach out of 11 prohibited a parking garage
16 based upon the 2017 Comprehensive Plan. Said another
17 way, a parking garage could theoretically be built in
18 nine designated areas within the city.

19 Bruce Garrett testified to an important
20 Planning & Zoning meeting on April 12th of 2017,
21 wherein the Comprehensive Plan was discussed. Present
22 at that meeting, April 12th of 2017, were Planning &
23 Zoning members Reed Mapes, William Vincent, John Metz,
24 and Patricia Shay. The Court heard the tape of that
25 meeting. The Court heard discussions that no specific

1 site location for a potential parking garage was
2 designated, although only two designated areas were
3 prohibited within this location. The parking garage,
4 was clear, was potentially permitted within the Comp
5 Plan in nine designated areas. It appears to this
6 Court that the Planning & Zoning Board was being asked
7 to determine whether the parking garage use was
8 consistent with the Comprehensive Plan and they were
9 being asked to make that determination very quickly,
10 indeed at that very meeting.

11 Mr. Vincent makes a specific inquiry about
12 whether the Comprehensive Plan would need to be amended
13 if the garage were proposed for a specific site.
14 Mr. Mapes inquires during the discussion portion as
15 well.

16 It appeared to this Court that the City was
17 looking to get the Planning & Zoning committee's
18 comments, concerns and recommendations regarding the
19 consistency of a parking garage within certain
20 designations. It was indeed a lengthy discussion. It
21 seems to this Court that the Planning & Zoning Board
22 when faced with the speed with which they were being
23 asked to review the potential for a parking garage may
24 have felt that the decision as to the propriety of a
25 parking garage may have already been decided, or at

1 least was moving forward very quickly. It appeared to
2 me that the Planning & Zoning Board at that time was
3 hostile to the idea of a parking garage, and certainly
4 hostile to the idea that they would have to make such a
5 recommendation so quickly. Again it may have appeared
6 to the Planning & Zoning Board that either the City
7 Attorney or to some extent the City Commission more
8 generally were not similarly as hostile to the idea of
9 a potential parking garage in Bradenton Beach as they
10 were.

11 It is clear to this Court that the level of
12 concern with regard to the potential of a parking
13 garage as a result of the discussion that took place at
14 the Planning & Zoning Board meeting on April 12th,
15 2017, was quite high. Again, the discussion regarding
16 what a problematic situation parking was on Bradenton
17 Beach and the potential solutions, including shuttles,
18 a parking garage, et cetera, were lengthy at that
19 meeting. The discussion was put off for another week.
20 In this Court's opinion, this meeting was likely the
21 genesis of Concerned Citizens of Bradenton Beach.

22 The Court then heard from Ricinda Perry.
23 She's worked as legal counsel for 15 years for the City
24 of Bradenton Beach. She explained that Planning &
25 Zoning Board was a body appointed by the City

1 Commission to establish policy regarding land use
2 matters and make recommendations to the Commission
3 regarding Land Development Code. She discussed that
4 the CRA was a Community Redevelopment Agency that uses
5 tax funding to lift blighted areas, among other things.
6 She testified that Planning & Zoning Board would be
7 tasked with reviewing the CRA plans as part of its
8 duties.

9 Of significance, she sent an e-mail to the
10 Planning & Zoning Board members on July 25th, 2019, to
11 notify them of the Sunshine Law implications of CNOBB
12 meetings and of group e-mails. She sent another e-mail
13 on July 27th to Mayor Shearon and cc'ing all the P&Z
14 Board members over her concerns regarding CNOBB
15 meetings being attended by Planning & Zoning and Scenic
16 WAVES members in violation of the Sunshine Law. The
17 Court will discuss those e-mails in more detail later.

18 The Court listened to portions of the
19 July 14th, 2017, CNOBB meeting. At that meeting,
20 Mr. Mapes states, quote, "This is a P&Z issue. This is
21 something before Planning & Zoning," referring to
22 The Bridge Tender property swap issue.

23 At that same meeting, Ms. Robertson's voice
24 can be heard saying, quote, "I have concern about how
25 the CRA is functioning."

1 It appears to this Court that the group
2 appears to be using the term "initiatives" very
3 loosely. At this meeting, they are setting up website
4 discussions and delegating -- delegation of duties.

5 The Court listened to the July 20th, 2017,
6 CNOBB Steering Committee meeting. At that meeting,
7 Bill Vincent was present, Tjet Martin was present,
8 Patty Shay was present, and Mr. Mapes arrived late. At
9 that meeting, someone mentioned the goal to prohibit
10 construction of a parking garage within the City of
11 Bradenton Beach; and Ms. Martin responds, "It's on the
12 CRA list."

13 Mr. Vincent interjects with a discussion about
14 spending City money on the purchase of property to
15 build a private parking garage. There appears to be a
16 consensus at this meeting that there should be no
17 parking garage within the City of Bradenton Beach.

18 Someone at this meeting testifies that the
19 parking garage could easily come before Planning &
20 Zoning. Mr. Mapes arrives and begins to talk about
21 initiatives regarding the goal of preventing a parking
22 garage, among other things.

23 The Court heard the entire July 25th, 2017,
24 CNOBB meeting. At that meeting, Steering Committee
25 meeting, Mr. Mapes states, quote, "The goal is to

1 prohibit construction of a parking garage in the city.

2 It would be a huge building."

3 At that same meeting, Mr. Metz talks about
4 prohibit construction of a parking garage in the City
5 of Bradenton Beach. It doesn't matter if it's by a
6 municipality or by a huge corporation.

7 Mr. Mapes mentioned the horrendous traffic
8 problem that would result as a result of a parking
9 garage.

10 The Court also heard portions of the
11 August 3rd, 2017, CNOBB Steering Committee meeting. At
12 that meeting, present was Bill Vincent, Tjet Martin,
13 John Metz, Patty Shay. At that meeting, there was a
14 discussion about the letter from the Florida Commission
15 on Ethics. The Court will discuss that later in more
16 detail, a bit later.

17 Mr. Mapes arrived at the meeting and discussed
18 whether this group should be called, quote, "a
19 political organization," close quote.

20 The Court certainly had questions about Rose
21 Vincent's participation in this meeting. The
22 testimony, however, established that she took notes at
23 at least four CNOBB meetings and was an active
24 participant.

25 I'm going to reread portions of the Sunshine

1 Law as evident -- as outlined in the Florida
2 Constitution. Quote, "at which public business of a
3 body is to be transacted or discussed". The Court
4 emphasizes the word "discussed." "At which public
5 business of such a body is to be transacted or
6 discussed".

7 Clearly, public business was discussed at many
8 and virtually all of the CNOBB meetings. This is not a
9 close call. Even after being advised not to continue
10 to do so, even after not getting any clarity via the
11 Florida Ethics Commission letter, the Defendants
12 continued to meet, continued to discuss at length
13 issues that not only have come before the Planning &
14 Zoning Board and the Scenic WAVES committee, that were
15 obviously certain to continue to come before Planning &
16 Zoning and Scenic WAVES.

17 The Court needs to read a letter that
18 Mr. Vincent sent to the Florida Commission on Ethics
19 because it's significant. It's dated July 19th of
20 2017, and in part reads, "At the four development
21 meetings and two organizational meetings, in addition
22 to myself, there were three other members of the
23 Planning & Zoning Board members present. Two members
24 of the Scenic WAVES Partnership were present."

25 The letter continues, "CNOBB is a grassroots

1 citizens initiative with a mission and vision as
2 described on our website with no connection whatever to
3 city government. However, out of an abundance of
4 caution, it is important to ensure compliance with
5 applicable laws. The questions for the Florida
6 Commission on Ethics are," and I'm going to read all
7 four of them, because they are significant questions.

8 "One. Is it permitted or a violation of the
9 Florida Sunshine Law for more than one member of a
10 Planning & Zoning Board to be seated on the governing
11 board of a neighborhood association?

12 "Two. If appointed officials are members of a
13 neighborhood association, is the association itself
14 governed or bound by the Sunshine Law?

15 "Three. Since more than one member of the
16 Planning & Zoning Board will be in attendance at the
17 meeting, are we required to include a phrase such as
18 'Note: More than one elected or appointed official
19 member may be in attendance' in the newspaper
20 advertisement?

21 "Four. Since elected or appointed city
22 officials will be present at general membership and/or
23 steering committee meetings, is the office of the city
24 clerk obligated to post the meetings at the City Hall
25 and/or on the city website?

1 "Five. Is participation in discussions on
2 neighborhood issues that may come before City
3 Commission but not before the Planning & Zoning Board
4 permitted?"

5 These are all significant and important
6 questions. The fact is the Defendants never got
7 answers to those questions. The fact is the Defendants
8 continued to meet, continued to discuss meetings
9 despite their concerns, despite these significant
10 questions, despite not getting answers to these very
11 important questions.

12 Had they contacted Ricinda Perry, she would
13 have answered all these questions definitively, Yes,
14 the Sunshine Law applies. Had they contacted Mickey
15 Palmer, the County Attorney, he would have said, Yes,
16 the Sunshine Law applies. Had they contacted any
17 attorney in the state of Florida, any attorney in the
18 state of Florida would have said, Yes, the Sunshine Law
19 applies, but the answer that they received was a
20 non-answer.

21 This is the answer that they received: "This
22 is in response to your correspondence dated July 19th
23 and received in this office July 24th, in which you
24 make inquiry regarding requirements of the open
25 meetings law relative to a neighborhood association.

1 "The Florida Commission on Ethics does not
2 administer, nor does it have jurisdiction with respect
3 to open meetings laws. The Florida Attorney General
4 has a website on which you can find the 2017 Sunshine
5 Manual as well as opinions that may be useful. Should
6 you be unable to find information you seek here, you
7 may visit or engage private -- you may seek -- you may
8 wish to engage private counsel who can research the
9 issue and advise you." Clearly, that's a non-answer.

10 Similarly, the Office of the Attorney General
11 responds: "Hello. Thank you for your inquiry. You
12 state you are a member of a planning and zoning board
13 for the city. You also have become involved with a
14 neighborhood association. You ask about the
15 application of the Sunshine Law to meetings of the
16 neighborhood association, CNOBB, that are also attended
17 by members of the planning and zoning board. You would
18 also like to know whether the Sunshine Law applies to
19 meetings of the association.

20 "The question you have asked -- the questions
21 you have asked are similar to those I receive from
22 other public officials who become involved with private
23 organizations that consider some of the same issues
24 that are addressed by public boards. My response is
25 always to immediately confer with the city attorney so

1 that you can be sure that you are in compliance with
2 the Sunshine Law. For example, the city attorney may
3 wish to ensure that the notice for the CNOBB meetings
4 contains information specifically reflected --
5 reflecting that members of the planning and zoning
6 board will be in attendance and that issues may be
7 discussed that are the same as those that could be
8 faced by the planning and zoning board at some point in
9 the future. The city attorney might also wish to
10 ensure that these notices are published in the same
11 manner and in the same location as notices for the
12 planning and zoning board. Alternatively, the city
13 attorney may recommend that planning and zoning board
14 members not serve on CNOBB -- CNOBB because of the
15 possibility that the same issues could be -- could at
16 some point be before the public board and the private
17 association."

18 The letter continues, "You and the city
19 attorney may also wish to explore the possibility of an
20 advisory Attorney General's Opinion in the event of
21 uncertainty. The procedure for obtaining an AGO are
22 discussed at the Options [sic: Opinions] site on
23 myfloridalegal.com.

24 "If you have any questions, or need any
25 additional information, please let me know. Sincerely,

1 Pat Gleason."

2 As was the case with the Florida Commission on
3 Ethics letter, the recommendations and advice contained
4 in this opinion were completely ignored.

5 The Florida Supreme Court in Town of Palm
6 Beach vs. Gradison, 276 [sic: 296] So. 2d 473, stated
7 "The principle to be followed is very simple: When in
8 doubt, the members of any board, agency, or authority
9 or commission should follow the open meetings policy of
10 the State."

11 I'll read that again. "When in doubt, the
12 members of any board, agency, authority or commission
13 should follow the open meetings policy of the State."

14 Well, there was a doubt here. Clearly there
15 was a doubt, because the CNOBB members were reaching
16 out to people they thought may help ease their concerns
17 and their doubts.

18 The Defendants have attempted to suggest that
19 they were attempting to try to comply with the
20 provisions of the Sunshine Law. The Defendants'
21 attempt to do so is simply not accurate. To the extent
22 that any of the Defendants had concern about whether
23 their continued meeting as a CNOBB group would violate
24 the Sunshine Law, those concerns went nowhere, were
25 completely ignored. As indicated, all of them

1 completely ignored the e-mail from Ms. Perry and the
2 forwarded e-mail from Mayor Shearon. They never even
3 mentioned it. All of them completely ignored the
4 non-response contained in the letter from the Ethics
5 Commission and the response from the Attorney General's
6 Office. This is significant. In their eagerness to
7 attempt to thwart the possibility of a potential
8 parking garage, they completely ignored their
9 obligation to comply with their duty and observe the
10 Sunshine Law. Their emotion and passion as to this
11 important issue clouded what should have been a
12 relatively easy analysis; that any time we meet as a
13 group and a P&Z topic or a potential P&Z topic is
14 raised, the Sunshine Law applies.

15 The Plaintiff indicated the following quote in
16 their pretrial memorandum. "This case is about a --
17 this case is about a group of potentially well-intended
18 individuals who because of their zealous nature refused
19 to abide by the law, refused to abide by their oath of
20 office, refused to obtain the advice of professionals,
21 and sought to move forward to satisfy their own
22 personal agendas as it relates to city government,
23 regardless of the statutory and constitutional
24 obligations." This Court agrees.

25 This Court would modify that sentence to some

1 extent to read as follows: "This case is about a group
2 of potentially well-intended individuals who because of
3 their zealous nature and abject hostility to the idea
4 of a parking garage refused to abide by the law,
5 refused to abide by their oath of office, refused to
6 obtain the advice of professionals, and sought to move
7 forward to satisfy their own personal agendas as it
8 relates to city government, regardless of their
9 statutory and constitutional obligations."

10 The Defendants' attempt to characterize these
11 violative meetings as ballot initiative meetings
12 pursuant to Section 166.031 is simply not persuasive.
13 This, quote, "ballot initiative," close quote, defense
14 strikes this Court as an after-the-fact attempt to
15 justify or otherwise rationalize what were otherwise
16 clear and unequivocal violations of the Sunshine Law.
17 In this Court's estimation, it is a clever explanation
18 for such violations, but it is not a compelling or
19 persuasive one.

20 Citizens certainly have the right to avail
21 themselves of Section 166.031. When those initiatives
22 are largely being driven by members of a city advisory
23 board concerning issues that have and will continue to
24 come before that citizen advisory board and the
25 discussion of those initiatives occur at meetings

1 outside of the Sunshine Law, there is a problem.

2 Again, this ballot initiative defense seems
3 contrived and unpersuasive. Even if these outside the
4 Sunshine Law meetings were pursuant to Section 166.031,
5 ballot initiative, as the Defendants suggest -- which
6 again this Court does not believe is credible based
7 upon all the other evidence -- the Court is not certain
8 that that is a defense to an otherwise clear violation
9 of the Sunshine Law.

10 Said another way, I find that the Defendants'
11 effort to characterize these meetings as ballot
12 initiatives does not ameliorate the need that meetings
13 of this nature wherein Planning & Zoning Board members
14 debate Planning & Zoning issues need to be held in
15 compliance with the Sunshine Law.

16 Also importantly, there were at least four
17 CNOBB meetings that were not recorded early on as the
18 group was becoming organized. What was discussed at
19 those meetings? Who attended those meetings? These
20 questions point to the obvious need for Sunshine Law
21 compliance.

22 The effort to characterize their violative
23 meetings as a right to assemble and to speak freely as
24 guaranteed by the First Amendment also is not
25 persuasive. Every citizen has the right to assemble

1 and has the right to free speech. However, when an
2 individual joins a government advisory board, when an
3 individual voluntarily decides to become a member of a
4 Planning & Zoning Board or a citizens -- a Scenic WAVES
5 committee, when that individual takes an oath, the
6 Sunshine Law still applies. If that were not the case,
7 every county commission, every city council, every
8 advisory board could hold secret meetings and simply
9 say, Well, I have a First Amendment right to do so.
10 That would largely make the Sunshine Law meaningless
11 and void.

12 One more important point. We spent a great
13 deal of time talking about what specific topics were
14 discussed at the CNOBB meetings and the context of
15 those discussions, whether they were discussions about
16 ballot initiatives, more generalized complaints about
17 how the city was being run particularly from a land use
18 perspective, and obviously the conversations and topics
19 themselves are important. Again, obviously the
20 conversations and topics are important. I am not
21 suggesting that they are not, but I think we are
22 missing the point here. Simply because the Defendants
23 did not use the word "parking garage" at the August 3rd
24 meeting does not mean in and of itself that a Sunshine
25 Law violation did not occur.

1 Said another way, any time a governing body or
2 a group that largely consists of a governing body meets
3 outside of the Sunshine Law, meets outside of City
4 Hall, the focus is not simply on the words but on the
5 meaning itself. I will repeat that, because it's
6 significant.

7 Any time a governing body or a group that
8 largely consists of a governing body meets outside of
9 the sunshine, in other words meets outside of City
10 Hall, the focus is not simply on the words, but on the
11 meaning itself. This is true because the Sunshine Law
12 is to be liberally broadly construed to give effect to
13 its public purpose.

14 For instance, the Defendants seem to think
15 that because they avoided the word "parking garage" on
16 the August 3rd meeting that that somehow insulates them
17 from Sunshine Law implications. It does not.

18 Recall that the Sunshine Law prohibits
19 discussions, discussions of public business. I repeat,
20 "at which public business of such a body is to be
21 transacted or discussed", emphasis on the word
22 "discussed." Public business was discussed at every
23 CNOBB meeting.

24 I repeat. Public business was discussed every
25 time CNOBB met. That was largely the point of the

1 organization. The whole focus of the organization was
2 to redress concerns about public business, about how
3 the CRA was being run, the fact that a parking garage
4 was even being considered, a whole host of public
5 business.

6 Listen to these quotes. And as an aside, it
7 certainly is unusual that we have tapes of at least
8 some of the meetings that took place outside of the
9 sunshine. That's definitely unusual and I will speak
10 to it more a bit later, but listen to these quotes.

11 Quote, "I have concern about how the CRA is
12 functioning," close quote.

13 Quote, "We need to prohibit the construction
14 of a parking garage in the City of Bradenton Beach,"
15 close quote.

16 Quote, "It is on the CRA list," close quote.

17 Quote, "Parking garage could easily come
18 before Planning & Zoning," close quote.

19 Quote, "That whole strip over there would be a
20 parking garage," close quote.

21 Quote, "We need to specify a municipal parking
22 garage," close wrote.

23 Quote, "We need to prohibit construction of a
24 parking garage in the city. It would be a huge
25 building," close quote.

1 Quote, "We need to prohibit construction of a
2 parking garage in the City of Bradenton Beach. It
3 doesn't matter if it's by a municipality or a huge
4 corporation," close quote.

5 Quote, "Horrendous traffic problems with a
6 parking garage," close quote.

7 Those were all quotes. That is the very
8 definition of a discussion about public business. I
9 repeat, that is the very definition of a discussion
10 about public business.

11 And it wasn't just parking garage discussions.
12 CNOBB discussed ropes and bollards, sidewalks, parking
13 issues generally, The Bridge Tender land swap, Bridge
14 Street planters; all public business as contemplated by
15 the statute, all issues that had come before the
16 Planning & Zoning or Scenic WAVES.

17 While I'm referring to quotes, let me quote
18 one more important statement. At the July 25th CNOBB
19 meeting, Mr. Mapes refers to, quote, "a sunshine
20 problem," close quote. Those were exact words, "a
21 sunshine problem." Patty Shay says, quote, "I agree."
22 What happens? Nothing. The discussion continues
23 unabated. The discussion of public business continues
24 unabated.

25 Let me say one more thing about quotes. I

1 have spent time discussing the words that were spoken,
2 the topics of conversation, and the context of these
3 discussions. But as I have said previously, the focus
4 should not exclusively be on the words themselves, and
5 there is a reason why the focus is not entirely on the
6 words spoken during alleged Sunshine Law violative
7 meetings. Again, the words are important. The
8 Plaintiff has to prove that members of a governing body
9 or members of a government advisory board who are
10 subject to the Sunshine Law did in fact meet and
11 discuss issues that involved public business in
12 violation of the Sunshine Law provisions, but by
13 focusing on the words themselves, we lose sight of the
14 fact that rarely are the meetings wherein it is alleged
15 that a Sunshine Law violation occurred are taped. This
16 case is clearly an unusual circumstance. In virtually
17 every situation wherein it is alleged that members of a
18 governing body held out of the sunshine meetings is
19 there an actual record of what was said.

20 Think about it. If all someone who was
21 violating the Sunshine Law had to say was, Sure, we
22 met, we met regularly, but we didn't talk about public
23 business; we talked about the weather, we talked about
24 how much rain we are getting, we talked about the
25 latest fashions, the Sunshine Law certainly wouldn't

1 have much teeth. As a practical matter, it wouldn't do
2 very much to make sure that the public had access to
3 all the decisions and the decision-making process of
4 its governing bodies, and recall that as I said we had
5 four CNOBB meetings early on in its formation that were
6 held in this case that were attended by members of the
7 Planning & Zoning Board and Scenic WAVES members that
8 were not recorded. Again, what was discussed at those
9 meetings? Those meetings were not noticed in any way.
10 So again, the discussions are important, but it must in
11 fact be established that members of a governing body or
12 members of a governing advisory board discuss issues
13 that either were or were likely to come before them in
14 their official capacities. But by focusing on the
15 words themselves, we lose sight of the fact that the
16 Sunshine Law is to be construed liberally to give
17 effect to its provisions and prevent -- and to prevent
18 easy circumvention of its mandates.

19 Quoting from our Florida Supreme Court in
20 Sarasota Citizens For Responsible Government vs. City
21 of Sarasota found at 48 So. 3d 755, quote, "The statute
22 should be construed so as to frustrate all evasive
23 devices. This can be accomplished only by embracing
24 the collective inquiry and discussion stages within the
25 terms of the statute, as long as such inquiry and

1 discussion is conducted by any committee or other
2 authority appointed and established by a governmental
3 agency, and relates to any matter on which foreseeable
4 action will be taken."

5 So while the words and discussions are
6 extremely important in proving alleged Sunshine Law
7 violations, the meetings themselves are important as
8 well. And here, we have many meetings -- some
9 recorded, others not recorded -- by members of duly
10 appointed governing advisory boards outside of the
11 Sunshine Law.

12 Think about this. Imagine four members of the
13 Manatee County Commission who didn't like the way the
14 majority is voting, don't like the direction of the
15 County, don't agree with the recommendation of the
16 County Administrator. They form a group. They invite
17 others, but they form a group and they meet privately.
18 They're not hiding, these meetings are not
19 surreptitious, but they regularly meet to discuss
20 issues that do or could come before the full board.

21 Let's take it one step further. This group of
22 four county commissioners are very concerned about,
23 say, Mosaic expanding their phosphate operation in
24 northern Manatee County. Say it's looking like that
25 expanded phosphate mining request has some support on

1 the County Commission. Say these four members, these
2 four of them decide to meet -- not secretly, they do so
3 in a church hall, they invite others to join them, but
4 they don't obviously notice it like a regular County
5 Commission meeting would be noticed, they certainly
6 don't ask the County Attorney whether such a meeting is
7 appropriate pursuant to the Sunshine Law. Say at this
8 meeting of these four county commissioners they discuss
9 strategies on how to prevent Mosaic's expanded
10 phosphate mining. They feel very passionate about this
11 issue. It would be a disaster as far as they are
12 concerned. I think we could all agree that a meeting
13 of that nature would be a problem from a Sunshine Law
14 perspective.

15 Add to our analogy the fact that at some
16 point, the County Attorney finds out about the meetings
17 of these four county commissioners outside of the
18 County Commission chambers and sends those four county
19 commissioners an e-mail that says, This e-mail should
20 serve as notice that you have been notified of your
21 legal obligations as Planning & Zoning Board members
22 and members of the County Commission, as well as
23 members of the Scenic Highway regarding the Sunshine
24 Law. Imagine those four county commissioners receiving
25 a letter warning them of a potential violation of the

1 Sunshine Law from County Attorney Mickey Palmer. What
2 if these county commissioners did nothing? What if
3 these county commissioners continued to meet, continued
4 to meet and discuss strategies for how to deal with
5 what they continued to believe is a very troubling
6 prospect of a significantly expanded phosphate mining
7 operation in their backyard? It is this very type of
8 situation that the Sunshine Law was designed to
9 address. The discussions and decision-making process
10 should always be out in the open.

11 The Defendants here, members of government
12 advisory boards, are similar to the four county
13 commissioners in my example. In their passionate and
14 firmly held belief that a parking garage should not be
15 a topic of discussion, and in their firmly held belief
16 that the City should not have participated in a land
17 swap with The Bridge Tender, in their firmly held
18 belief that the CRA is functioning inappropriately, in
19 their firmly held belief that traffic would be a
20 disaster if a parking garage were built, and in their
21 firmly held belief that the city generally has become
22 too commercialized, they abdicated their obligation to
23 follow the law, the law in this case being the Sunshine
24 Law. Again, this is not a close call.

25 My finding that all the Defendants clearly and

1 unequivocally violated the Sunshine Law does not in any
2 way suggest that they are bad people. I do not agree
3 with the suggestion that the Defendants here attempted
4 to form a secret government or a shadow government, or
5 that their meetings were surreptitious or clandestine
6 in any way. The meetings were open, the meetings were
7 noticed.

8 Obviously, the notice requirements for city
9 advisory board meetings under the Sunshine Law are
10 specific and extensive. Obviously, the members of
11 CNOBB did not comply with those specific and extensive
12 Sunshine Law notice requirements.

13 Again, the Court is not suggesting that in
14 violating the Sunshine Law that these are bad people or
15 committed a crime. This is not a criminal statute.
16 That fact, the fact that the Defendants are good people
17 and did at a time voluntarily agree to contribute to
18 their community by agreeing to serve on two city
19 advisory boards does not however make the Sunshine Law
20 violation here any less obvious.

21 Do these individuals have a right to assemble?
22 Absolutely. Do these individuals have a right to free
23 speech? Absolutely. Do these individuals have a right
24 to be concerned about their beloved city and feel
25 passionate about changes that they feel are being

1 considered that are detrimental to that city? Of
2 course. That is a good and healthy thing. Our country
3 needs more of that. I agree with Ms. Shay, civic
4 involvement is good.

5 But once you choose to become part of the
6 government -- I repeat, once you choose to become part
7 of the government by becoming a member of a government
8 advisory board, you are no longer just a spectator, an
9 outsider looking in. Rules apply. Laws apply. The
10 Defendants simply did not follow those rules. The
11 Defendants simply did not follow those laws.

12 Again, I'll say this one more time, this is
13 not a close call. Judgment is in favor of the City.
14 The Court finds that all the Defendants here as members
15 of Planning & Zoning and members of the Scenic WAVES
16 Partnership committee were subject to Article I,
17 Section 24 of the Florida Constitution and
18 Section 286.011 Florida Statute. The Court will find
19 that based upon the compelling and persuasive
20 testimony, those Defendants violated that Florida
21 Constitution and that Florida Statute. Judgment is in
22 favor of the City.

23 The Court will be holding post-trial
24 proceedings in this matter pursuant to this final
25 judgment.

1 Mr. Watrous, how much time do you believe that
2 the City will need for any and all post-judgment
3 matters? You don't have to say definitively, I just
4 need a rough idea.

5 MR. WATROUS: Do you mean hours -- time in the
6 hearing, or when you'd like to have the hearing take
7 place?

8 THE COURT: Time in the hearing.

9 MR. WATROUS: Within the next -- we'd like to
10 move this along, within the next two weeks and we'd
11 look to --

12 THE COURT: Oh, no, that's not happening. No,
13 no, no. I meant -- I misunderstood. How much time do
14 you need?

15 MR. WATROUS: Two hours.

16 THE COURT: Okay. Mr. Shults, how much time
17 do you think you'll need?

18 MR. SHULTS: Your Honor, we still have the
19 pending motion to strike their claim for attorney's
20 fees, I -- if that would be wrapped into what they're
21 -- their motion --

22 THE COURT: I think it will be wrapped in. I
23 think it will be heard at the same time.

24 MR. SHULTS: (Nods head up and down.)

25 THE COURT: How much time?

1 MR. SHULTS: I think -- well, I'm not sure
2 what their post-trial motion would be. That's I guess
3 -- I'm not sure.

4 THE COURT: Potential sanctions, I suppose.

5 MR. SHULTS: Okay. I would say probably three
6 hours would be more appropriate.

7 THE COURT: All right. So if it's three
8 hours, it's not going to be within weeks. My assistant
9 will reach out to you with the next available three
10 hours time period that's available.

11 We'll be in recess.

12 MR. WATROUS: Thank you.

13 THE BAILIFF: All rise. Court is now in
14 recess.

15 (Thereupon, these proceedings were concluded
16 at 11:01 A.M.)

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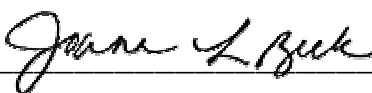
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CERTIFICATE OF COURT REPORTER

STATE OF FLORIDA)
COUNTY OF MANATEE)

I, JOANN L. ZECK, Court Reporter, certify that
I was authorized to and did stenographically report the
foregoing proceedings and that the transcript is a true
and complete record of my stenographic notes.

Dated this 20th day of July, 2019.





JOANN L. ZECK, Court Reporter

Notary Public

State of Florida at Large

My Commission #FF 233308

Expires: September 19, 2019

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